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MEMORANDUM OPINION

Court of Appeals of Texas,
San Antonio.

Pete RAMIREZ, III, Appellant

v.

Bishop Gregory MANSOUR, in his
representative and/or trustee capacity for
the Eparchy of Saint Maron and St. George
Maronite Church; Archbishop Jose H.
Gomez, in his representative and/or trustee
capacity for the Archdiocese of San Antonio;
and Msgr. James T. Khoury, Appellees.

No. 04-06-00536-CV. | Aug. 1, 2007.

From the 131st Judicial District Court, Bexar County,
Texas, Trial Court No. 2006-CI-10600; [Michael
Peden](#), Judge Presiding.

Attorneys and Law Firms

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Sitting: [KAREN ANGELINI](#), Justice, [SANDEE
BRYAN MARION](#), Justice, [REBECCA SIMMONS](#),
Justice.

Opinion

MEMORANDUM OPINION

Opinion by [REBECCA SIMMONS](#), Justice.

*1 In 2005, Appellant Pete Ramirez, III sued
appellees for sexual abuse by one of the appellees,

James T. Khoury. Appellees moved for summary
judgment, and at the same time sought to limit
the expert testimony of a treating psychologist.
The trial court limited the expert's testimony and
granted summary judgment. Ramirez appeals the order
limiting expert testimony and the resulting summary
judgment.

FACTUAL BACKGROUND

According to the summary judgment evidence, in
1982, Pete Ramirez, III ("Ramirez"), then a minor,
was sexually abused by James Khoury, a Maronite
priest of St. George Maronite Church. In 1985,
Ramirez, his father, mother, and sister entered into a
settlement agreement and executed a release of claims
(the "Agreement") against James Khoury, St. George
Maronite Church, and the Diocese of St. Maron in
Brooklyn, New York (collectively the "Church"). At
the time of the Agreement, Ramirez was over the age
of eighteen and he and his family were represented by
counsel.

Following high school, Ramirez briefly attended the
University of Texas at San Antonio, married twice,
became a licensed insurance agent, and also held
licenses relating to the sales of certain securities.
However, it is undisputed Ramirez continued abusing
drugs and alcohol for more than fifteen years. He was
convicted of several DWIs, imprisoned, and appeared
before the courts on several occasions. Ramirez
represented himself in his divorce. He remarried in
1997. Over the course of years, he sought treatment
from a variety of health care providers.¹

¹ Summary judgment evidence provided by the
Church included deposition testimony by a
variety of medical providers who testified
that Ramirez was of sound mind during their
treatment of Ramirez. Testimony from Ramirez's
criminal counsel that Ramirez was of sound mind
during their representation was also provided.

In 2005, Ramirez filed suit against Appellees,
successors to the original Church defendants, to
recover damages for the sexual abuse. When the
Church asserted the affirmative defenses of limitations
and release, Ramirez responded he was under a legal
disability during the intervening years, tolling the

statute of limitations. In response to the Church's motion for traditional summary judgment, Ramirez relied on the testimony of Dr. Laurence Smith, a developmental psychologist, who occasionally treated Ramirez beginning in 1999. Dr. Smith testified regarding Ramirez's mental state and, at issue here, opined that Ramirez labored under a psychiatric/psychological disability which rendered him a person of unsound mind and which incapacitated him to the point that he did not have access to the courts to redress the wrongs done to him in his youth. The Church filed a motion to limit or exclude this testimony arguing Smith did not qualify as an expert witness and his opinion regarding the mental capacity of Ramirez, when he signed the Agreement and subsequent lack of capacity to seek redress from the courts, was unreliable. On May 10, 2006, the trial court granted the motion limiting the expert testimony. The Church was subsequently granted a summary judgment.

UNSOUND MIND

We first examine the legal concept of unsound mind and then review the expert testimony of Dr. Smith pertaining to this concept. Unsound mind is not defined in the Texas Civil Practice and Remedies Code, but the Probate Code defines incapacity. Under the Probate Code, an incapacitated person means "an adult individual who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs." [TEX. PROB.CODE ANN. § 3\(p\)\(2\)](#) (Vernon 2003). Although not defined in the Probate Code, "in general, 'persons of unsound mind' and 'insane persons' are synonymous." [Hargraves v. Armco Foods, Inc.](#), 894 S.W.2d 546, 547 (Tex.App.-Austin 1995, no writ). See also [Chavez v. Davila](#), 143 S.W.3d 151, 154 (Tex.App.-San Antonio 2004, pet. denied).

EXPERT TESTIMONY

*2 Dr. Smith began practicing clinical psychology in 1962 in San Antonio. He was board certified in 1976, and his practice focused on working with children and adults who experienced trauma, as

well as adults suffering from marital and sexual problems.² He treated numerous victims of sexual abuse. Dr. Smith first treated Ramirez in 1999, and saw Ramirez approximately five times between 1999 and 2001 before Ramirez discontinued treatment. In 2004, Ramirez began treatment again with Dr. Smith, who ultimately diagnosed Ramirez as suffering from post-traumatic stress disorder (PTSD), depression, and substance abuse.

² Plaintiff's Response to Defendants' Motion for Summary Judgment included both the deposition and affidavit of Dr. Smith.

Dr. Smith's opinion regarding Ramirez's unsound mind and incapacity supported Ramirez's claim of unsound mind which caused a lack of capacity to contract in 1985, and tolling of the statute of limitations until the present suit was filed in 2005. Ramirez concedes his claims fail without Dr. Smith's testimony, and absent such testimony, summary judgment was proper. Ramirez argues that the trial court abused its discretion in excluding much of Dr. Smith's testimony, as Dr. Smith was qualified to give his opinion and his testimony was reliable.

A. Standard of review

We review a trial court's decision to admit or exclude expert testimony under an abuse of discretion standard. [K-Mart Corp. v. Honeycutt](#), 24 S.W.3d 357, 360 (Tex.2000); [Bartosh v. Gulf Health Care Ctr.-Galveston](#), 178 S.W.3d 434, 440 (Tex.App.-Houston [14th Dist.] 2005, no pet.). An abuse of discretion occurs when the trial court acts without reference to guiding rules or principles, or acts arbitrarily or unreasonably. [Downer v. Aquamarine Operators, Inc.](#), 701 S.W.2d 238, 241-42 (Tex.1985).

The proponent of the expert bears the burden to demonstrate the expert is qualified under [Texas Rule of Evidence 702](#), which includes showing that the expert's testimony is both relevant and reliable. [TEX.R. EVID. 702](#); [E.I. du Pont de Nemours & Co. v. Robinson](#), 923 S.W.2d 549, 556 (Tex.1995). "To be reliable, the scientific evidence must be grounded in scientific method and procedure such that it amounts to more than subjective belief or unsupported speculation." [Tex. Mut. Ins. Co. v. Lerma](#), 143 S.W.3d 172, 175 (Tex.App.-San Antonio 2004, pet. denied) (citing

Gammill v. Jack Williams Chevrolet, Inc., 972 S.W.2d 713, 720 (Tex.1998)).

B. Reliability

The trial court may admit expert testimony “[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.” TEX.R. EVID. 702. For the testimony to be admissible, the proponent of expert testimony must establish that: (1) the expert is qualified to render an opinion on the subject matter; (2) the testimony is relevant to the issues in the case; and (3) it is reliable. TEX.R. EVID. 702; *Robinson*, 923 S.W.2d at 556.³ Expert testimony is unreliable if it is not grounded in scientific method or procedure and is no more than subjective belief or speculation. *Volkswagen of Am., Inc. v. Ramirez*, 159 S.W.3d 897, 904 (Tex.2004). Expert testimony is also unreliable if there is too great an analytical gap between the data and the opinion proffered. *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 726-27 (Tex.1998) (stating that the trial court was not required “to admit opinion evidence which is connected to existing data only by the *ipse dixit* of the expert”).

³ In determining the reliability of an expert's opinion, the supreme court has examined six non-exclusive factors, as set out in *Robinson*:

- (1) the extent to which the theory has been or can be tested;
- (2) the extent to which the technique relies upon the subjective interpretation of the expert;
- (3) whether the theory has been subjected to peer review and/or publication;
- (4) the technique's potential rate of error;
- (5) whether the underlying theory or technique has been generally accepted as valid by the relevant scientific community; and
- (6) the non-judicial uses which have been made of the theory or technique.

Id. at 557.

1. Dr. Smith's Opinion

*3 The trial court did not exclude the testimony of Dr. Smith relating to his diagnosis or treatment of Ramirez; rather, it excluded Dr. Smith's conclusions that Ramirez was incapacitated when he signed the

Agreement in 1985 and was incapable of pursuing legal recourse regarding the sexual abuse until April 2004. The basis of Dr. Smith's opinion was that Ramirez lacked the “cognitive capacity to connect the sexual abuse and his emotional and mental disorders” between 1981 and 2004. Based on his experience, education, and training, Dr. Smith concluded Ramirez was of unsound mind “to the point that he did not have access to the courts to redress the wrongs” of the abuse. Dr. Smith further explained that Ramirez “did not have the capacity to understand and appreciate the nature of the Agreement he signed in April 1985.” Notably, Dr. Smith acknowledged Ramirez was aware of the abuse and understood it occurred, but insisted that Ramirez did not have the psychological ability to take legal action with respect to the sexual abuse.⁴ Dr. Smith believed Ramirez understood the consequences of breaching the Agreement, but did not understand what recourse he had. He believed Ramirez was “shepherded into the room to sign this document,” and Ramirez only knew he would receive money for signing the document. Dr. Smith stated Ramirez believed he didn't hire a lawyer and that the lawyer purportedly representing him represented his parents and thus, Ramirez complained to him that, “[T]his was done so quickly I didn't know what was going on.”

⁴ When asked for his definition of unsound mind, Dr. Smith testified, “I've been recently educated to this,” and agreed that it is not a medical or psychological definition, but one provided by Ramirez's counsel.

When confronted with Ramirez's ability to conduct other legal actions between 1985 and 2004, such as defending himself in insurance suits, managing his own divorce, and facing several criminal charges, Dr. Smith explained that Ramirez “encapsulated” the abuse and was able to separate it from his daily life. Dr. Smith recognized that not every person with PTSD is of unsound mind. In an effort to explain how someone could have an unsound mind in only one aspect of their life, Dr. Smith stated: “[I]f a person has had a trauma and has encapsulated it and is unable to deal with it, they are of unsound mind in that area....While [Ramirez] was able to ‘appear’ normal, he was laboring with these psychological disorders, and that area of his psyche was damaged to the point he was unable to participate in a proceeding such as the one that is currently pending, until November, 2004.”

Dr. Smith concluded in his deposition that the only area in which Ramirez was of unsound mind from 1985 to the time of the lawsuit was regarding the sexual abuse and any related legal claims.

2. Dr. Smith's Methodology

Dr. Smith testified the basis for the diagnosis of PTSD was from his discussions with Ramirez, including a clinical assessment and history, since he did not have any prior records from any other treating physicians or mental health care providers. In formulating his opinion, Dr. Smith asked Ramirez's "mother a few questions to help fill in some gaps, but most of the material is from Pete [Ramirez]." He accepted as true the patient's history as told by the patient, which Dr. Smith stated was a generally accepted practice among mental health professionals. Although he was aware that standardized testing was available, Dr. Smith did not perform any standardized tests on Ramirez.

*4 In explaining how he could assess the unsound mind of Ramirez in 1985 when he did not meet Ramirez until 1999, Dr. Smith stated the "basic premise of psychotherapy is to help people understand why they do what they do and how they got that way and there is a lot of education that goes on in that process...." He characterized the patient history as essential, and admitted that the majority of his opinion was based on what Ramirez told him, which he accepted as fact. Thus, he admitted, if someone told him that Ramirez lied about everything, his opinion would be wrong.

Although there is ample literature on PTSD, depression and anxiety, Dr. Smith was unaware of any literature linking PTSD with unsound mind or lack of capacity in a particular area. Likewise, he was unaware of any literature that supports the theory of a person suffering from an encapsulated trauma that is of unsound mind only in that area.⁵ When asked if there have been any writings or if he knew of any other professionals who have discussed the theory, Dr. Smith responded, "I do not. Not of the specific way that I'm using it, no."

⁵ In his deposition and in his affidavit, Dr. Smith refers to Anna Freud for support regarding defensive mechanisms.

C. Analysis

In *Gammill*, 972 S.W.2d at 726, the supreme court made clear that the *Robinson* factors cannot always be used to assess the reliability of nonscientific expert testimony. Nonscientific knowledge encompasses a wide range of topics including those not considered to be "hard science," such as social sciences and fields based primarily on experience and training. *Coastal Tankships, U.S.A., Inc. v. Anderson*, 87 S.W.3d 591, 599-600 (Tex.App.-Houston [1st Dist.] 2002, pet. denied). Faced with nonscientific expert testimony, the trial court must evaluate the principles, research, and methodology underlying the expert's conclusions. *Gammill*, 972 S.W.2d at 725. An expert must show a connection between the data relied upon and the opinion offered. *Volkswagen*, 159 S.W.3d at 906. Otherwise, there is simply too great an analytical gap between the expert's methodology and the conclusion. Dr. Smith's opinion in this case is largely based on the application of his knowledge and experience to the underlying data and can be analyzed by exploring whether an analytical gap exists either between the data and the facts of the case or Dr. Smith's methodology and his opinion.

The underlying data in this case was the history and assessment gained almost exclusively from Ramirez. This data was assumed to be true and is the foundation of Dr. Smith's opinion. No testing on Ramirez was performed. Although Dr. Smith testified that PTSD was a well known diagnosis and that victims often encapsulate their trauma, he admitted he was unaware of any published support for his conclusion that PTSD can cause an encapsulation such that a person is of unsound mind in a particular area and incapacitated for over twenty years. No articles or publications were cited in support of such an opinion. Dr. Smith's conclusion that he relied on his conversations and therapy sessions with Ramirez along with his considered opinion and unidentified literature is similar to the "laws of physics" relied upon by the expert in the *Volkswagen* case and suffers from the same problem.⁶ Dr. Smith does not close the "analytical gap" by explaining how Ramirez could be admittedly aware of the abuse, aware of the Agreement and its terms, receive the consideration for the Agreement but "not have the capacity to understand and appreciate the nature of

the Agreement he signed in April, 1985.” Nor does Dr. Smith adequately explain how Ramirez was of such unsound mind that he did not have access to the courts for the past twenty years. No studies were submitted, no testing was performed, no publications or peer review articles were submitted that support such a theory. Dr. Smith's opinion, admittedly, is based solely on his subjective interpretation of the facts. As such, the trial court could find that Dr. Smith's opinion was unreliable.

6 “Walker's reliance on the ‘laws of physics,’ without more, is an insufficient explanation. Although Walker maintains that the methods and formulas he employed are the ones generally accepted and utilized in the accident reconstruction profession, he does not explain how any of the research or tests he relied on support his conclusion.” *Volkswagen*, 159 S.W.3d at 906.

*5 Ramirez relies on *In re Estate of Robinson*, 140 S.W.3d 782, 790-92 (Tex.App.-Corpus Christi 2004, pet. denied), for the proposition that a psychiatrist may opine about a person's past mental health. In *Robinson*, the court concluded the expert witness, a forensic psychiatrist, could opine on the decedent's mental state during an earlier period, notwithstanding the fact the psychiatrist never treated the decedent. The expert in *Robinson* reviewed the decedent's extensive medical history, which showed a progressive decline in her mental and physical health. He reviewed CT scans showing several strokes and moderately severe brain atrophy. He reviewed records evidencing hardening of the arteries so severe that insufficient blood was going to the decedent's heart. Based on his twenty years' experience as a forensic psychiatrist, he reviewed information “ ‘to see how the person's functioning, what's happening to them, what type of illnesses they've had, how it affects them, primarily how they're functioning.’ ” *Id.* at 790. The expert then stated, based on his analysis of the medical records in the case showing deteriorating brain function and his understanding of mental capacity as defined in probate cases, the decedent did not have the capacity to write the will at issue.

The case at bar is distinguishable. Unlike the expert in *Robinson*, Dr. Smith did not review any of Ramirez's medical history or other documented

evidence upon which to base his conclusion. He relied almost exclusively on his patient's discussions during psychotherapy. Dr. Smith relies on the tested and recognized theories of PTSD and encapsulation, but there is a gap between these accepted theories and the conclusion of an isolated unsound mind and incapacity theory, which are conclusions unsupported by any objective evidence or publications.

The trial court could reasonably conclude that there is “simply too great an analytical gap between the data and the opinion proffered” by Dr. Smith. *Gammill*, 972 S.W.2d at 726 (citing *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146, 118 S.Ct. 512, 139 L.Ed.2d 508 (1997)). In other words, even if Dr. Smith's theory of limited unsound mind was valid, Dr. Smith did not demonstrate any objective evidence or data that would support the conclusion that Ramirez was of unsound mind from 1985 until 2004. Despite the lack of peer review, testing, or acceptance in the scientific community, Dr. Smith contends he “would clinically be able to say that [his theory is] true.” This amounts to nothing more than Dr. Smith's *ipse dixit*. *Id.* Based on the record before the trial court, we cannot say the trial court abused its discretion in excluding Dr. Smith's testimony as unreliable.⁷

7 Because we hold that the trial court did not abuse its discretion in excluding the testimony of Dr. Smith because it was unreliable, we do not reach the issue of his qualifications.

SUMMARY JUDGMENT

A. Standard of review

For a traditional summary judgment, the movant must show that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. *TEX.R. CIV. P. 166a(c)*; *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548 (Tex.1985). We review the trial court's grant or denial of summary judgment de novo. *Smith v. Janda*, 126 S.W.3d 543, 545 (Tex.App.-San Antonio 2003, no pet.). “[I]n order to avoid summary judgment on an unsound mind theory, the non-movant must produce specific evidence to show [he] did not have the mental capacity to pursue litigation for a definite time period, or produce a fact-based expert opinion to that effect.”

Chavez v. Davila, 143 S.W.3d 151, 156 (Tex.App.-San Antonio 2004, pet. denied).

B. Analysis

*6 When the trial court granted the Church's motion to strike Dr. Smith's testimony, Ramirez no longer had evidence of any viable claims, as all statutes of limitations expired. Ramirez brought the following causes of action: negligence, breach of fiduciary duty, gross negligence, civil assault and battery, and intentional infliction of emotional distress. Assault and battery actions are limited by a two-year statute of limitations. [TEX. CIV. PRAC. & REM.CODE ANN. § 16.003](#) (Vernon 2006). The breach of fiduciary duty is limited by a four-year statute of limitations. [TEX. CIV. PRAC. & REM.CODE ANN. § 16.004](#) (Vernon 2006). The sexual assault actions are limited to five years. [TEX. CIV. PRAC. & REM.CODE ANN. § 16.0045](#) (Vernon 2006). All other causes of action are limited to four years. [TEX. CIV. PRAC. & REM.CODE ANN. § 16.051](#) (Vernon 2006).

Ramirez claims he was legally disabled in that he was of unsound mind, and thus, the statutes of limitations have not run. [TEX. CIV. PRAC. & REM.CODE ANN. § 16.001](#) (Vernon 2006). However, that tolling provision exists to protect legally disabled persons "who have no access to the courts and to insure those persons' right to bring suit is not precluded by the running of limitations before the disability is removed." *Chavez*, 143 S.W.3d at 154. "The disability of a person of unsound mind is not only the lack of access to the courts, but also the inability to participate in, control, or even understand the progression and disposition of their lawsuit." *Ruiz v. Conoco, Inc.*, 868 S.W.2d 752, 755 (Tex.1993). Although Ramirez attempted to present evidence through Dr. Smith demonstrating that Ramirez was legally disabled under [section 16.001](#), the trial court excluded that testimony. Consequently, Ramirez did not present any evidence

establishing he was of unsound mind in order to toll the applicable statutes of limitations. Therefore, Ramirez failed to raise a genuine issue of material fact. Because there was no evidence Ramirez was of unsound mind at the time he signed the Agreement, and he brought suit well after the limitation periods expired, the Church proved its right to judgment as a matter of law.

RELEASE

"Absent proof of mental incapacity, a person who signs a contract is presumed to have read and understood the contract." *Tamez v. Southwestern Motor Transp., Inc.*, 155 S.W.3d 564, 570 n. 3 (Tex.App.-San Antonio 2004, no pet.); *Associated Employers Lloyds v. Howard*, 156 Tex. 277, 281, 294 S.W.2d 706, 708 (1956). Additionally, "[a] release, valid on its face, is, until set aside, a complete bar to any action based on matters covered in the release." *McMahan v. Greenwood*, 108 S.W.3d 467, 478 (Tex.App.-Houston [14th Dist.] 2003, pet. denied). After Dr. Smith's testimony was excluded, Ramirez had no evidence of an unsound mind at the time he signed the Agreement. Accordingly, the Church carried its summary judgment burden and established its right to judgment as a matter of law. [TEX.R. CIV. P. 166a\(c\)](#). We affirm the judgment of the trial court.

CONCLUSION

*7 The trial court did not abuse its discretion in limiting Dr. Smith's testimony, as Dr. Smith's opinion of a limited unsound mind and lengthy partial incapacity was not reliable. As Ramirez presented no other evidence to establish a tolling defense or to raise a genuine issue of material fact, the trial court did not err in granting summary judgment.